

Document No. 3723
Presented at Meeting of 2/1/79

MEMORANDUM

FEBRUARY 1, 1979

TO: BOSTON REDEVELOPMENT AUTHORITY 3723
2/1

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: PUBLIC DISCLOSURE CONCERNING SAN MARCO HOUSING DEVELOPMENT

On August 18, 1977, the Boston Redevelopment Authority designated San Marco Housing Corporation as Redeveloper of Disposition Parcels C-2-39, C-2-40 and C-2-41 in the Downtown Waterfront-Faneuil Hall Urban Renewal Area. The property was subsequently sold to San Marco on September 30, 1977.

San Marco Housing Corporation, a nonprofit corporation, is in the process of rehabilitating the buildings into 60 condominium units. On June 30, 1977, long previous to my becoming Director of the Authority, I signed a Purchase and Sale Agreement concerning one of the condominium units in the San Marco development. Attached hereto, please note my August 9, 1978 letter to the Chairman of the Authority and Charles Speleotis' August 25th letter to the City's Corporation Counsel and the resulting January 12, 1979 Conflict of Interest Opinion from the City.

In accordance with the Opinion of the City of Boston Law Department, I want to publicly state that during my tenure as Director of the Authority, I will refrain from any action, recommendation, or deliberation concerning San Marco Corporation and that I will proceed further in this matter only in compliance with that Conflict of Interest Opinion.

I hereby request that this Public Disclosure Memorandum including all Attachments, be incorporated into the official records of the Boston Redevelopment Authority.



CITY OF BOSTON
OFFICE OF PROPERTY EQUALIZATION

ROOM 705
CITY HALL, BOSTON, MASS. 02201
Phone (617) 725-4330

Kevin H. White
Mayor

ROBERT J. RYAN
DIRECTOR

August 9, 1978

Robert L. Farrell
Chairman
Boston Redevelopment Authority
New City Hall
Boston, Massachusetts 02201

Dear Mr. Farrell:

First, I want to thank you and the members of the Boston Redevelopment Authority for confirming my nomination as Executive Director.

In the interest of public disclosure, I wish to inform the Board that my sole real estate interest in the City of Boston is in a condominium at 114-124 Commercial Street. This is of concern to me in that this project is located within a designated Boston Redevelopment Authority development area and will require further Boston Redevelopment Authority approvals.

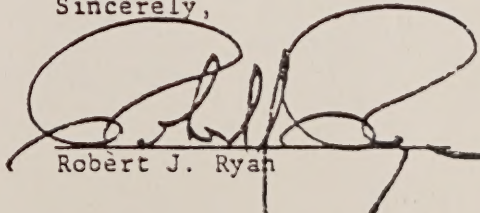
In response to a public advertisement offering 60 condominiums for sale, I signed a Massachusetts Purchase and Sales Agreement on June 30, 1977 with a private developer for a unit at the above address. I am presently awaiting completion of the unit which is anticipated in December, 1978.

Since I will not receive marketable title until after I assume my duties as Executive Director and, viewing this position as one of great public trust, I therefore request that this matter be publicly settled now.

I believe that an opinion of the Boston Redevelopment Authority General Counsel on this matter prior to my official assumption of duties on September 1, 1978, is essential.

Upon request of the Board and/or the General Counsel, I will provide the Board with all relevant documents and details of this transaction.

Sincerely,



Robert J. Ryan

RJR/r

Boston Redevelopment Authority

TO: HERBERT GLEASON, CORPORATION COUNSEL, CITY OF BOSTON

FROM: CHARLES J. SPELEOTIS, CHIEF GENERAL COUNSEL, B.R.A. *CJS*

DATE: AUGUST 25, 1978

SUBJECT: REQUEST FOR AN OPINION OF ROBERT J. RYAN

As per our recent telephone conversation, please find enclosed a request for an opinion by Robert Ryan concerning his purchase of a condominium from the SanMarco Housing Corporation. Also find enclosed a request by our Board Chairman which I am forwarding for your informational purposes. The property was sold to San Marco on September 30, 1977.

I have also attached to this request a copy of a recent opinion by you concerning the potential purchase of one of these units by a BRA employee. I draw your attention to Page 2 wherein an incorrect assumption was made that the property was not subject to a Land Disposition Agreement. The only future action contemplated by the Authority concerning the sale of the property would be a vote confirming the successful completion of the required improvements.

If you have any questions concerning this, please call.

Att.

CJS:mr

Boston Redevelopment Authority

Robert L. Farrell/Chairman

City Hall
Room 900, 1 City Hall Square
Boston, Massachusetts 02201
Telephone (617) 722-4300

August 14, 1978

Charles Speliotis, Esq.
Chief General Counsel
Boston Redevelopment Authority
City Hall - Room 900
1 City Hall Square
Boston, Mass. 02201

Dear Mr. Speliotis:

I enclose a xerox copy of a letter which I received from Robert J. Ryan, the new Executive Director of the B.R.A.

You will note that Mr. Ryan has signed a Purchase and Sale Agreement for the purchase of a condominium at 114-124 Commercial Street, the San Marco Project.

It is my impression that there was no prohibition issued to the City of Boston employees with respect to the purchase of property in this project. Mr. Ryan requests your opinion as to whether or not his purchase of that property would present a conflict of interest.

May I have your opinion on or prior to September 1, 1978.

Very truly yours,

Robert L. Farrell

Robert L. Farrell
Chairman

RLF:hc
Enclosure



CITY OF BOSTON
OFFICE OF PROPERTY EQUALIZATION

ROOM 705
CITY HALL, BOSTON, MASS. 02201
Phone (617) 725-4330

Kevin H. White
Mayor

ROBERT J. RYAN
DIRECTOR

August 9, 1978

Robert L. Farrell
Chairman
Boston Redevelopment Authority
New City Hall
Boston, Massachusetts 02201

Dear Mr. Farrell:

First, I want to thank you and the members of the Boston Redevelopment Authority for confirming my nomination as Executive Director.

In the interest of public disclosure, I wish to inform the Board that my sole real estate interest in the City of Boston is in a condominium at 114-124 Commercial Street. This is of concern to me in that this project is located within a designated Boston Redevelopment Authority development area and will require further Boston Redevelopment Authority approvals.

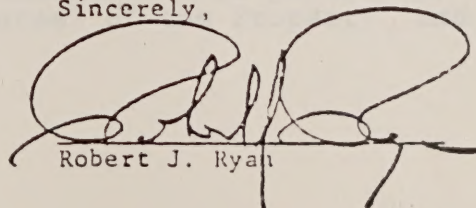
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Since I will not receive marketable title until after I assume my duties as Executive Director and, viewing this position as one of great public trust, I therefore request that this matter be publicly settled now.

I believe that an opinion of the Boston Redevelopment Authority General Counsel on this matter prior to my official assumption of duties on September 1, 1978, is essential.

Upon request of the Board and/or the General Counsel, I will provide the Board with all relevant documents and details of this transaction.

Sincerely,



Robert J. Ryan

RJR/r

CITY OF BOSTON



HERBERT P. GLEASON
Corporation Counsel

LAW DEPARTMENT

CITY HALL
BOSTON, MASSACHUSETTS 02201
(617) 725- 4017

January 12, 1979

RECEIVED

JAN 21 1979

BOSTON REDEVELOPMENT AUTHORITY
OFFICE OF THE DIRECTOR 9-1

Mr. Harold J. Carroll
Chief General Counsel
Boston Redevelopment Authority
Boston City Hall

Re: Conflict Opinion No. 9-1

Dear Mr. Carroll:

Your predecessor, Mr. Speliotis, had requested on behalf of Robert J. Ryan my opinion concerning a possible violation of G.L. c. 268A, commonly called the Conflict of Interest Law.

Mr. Ryan states that, in response to a public advertisement offering sixty condominiums for sale, he signed a Purchase and Sale Agreement on June 30, 1977, with San Marco Housing Corporation ("Redeveloper") for a unit at 114-124 Commercial Street ("Property"). It appears that the Boston Redevelopment Authority (BRA) conveyed the Property to the Redeveloper subject to a Land Disposition Agreement (LDA) dated September 30, 1977. Mr. Ryan states that he assumed his duties as Director of the BRA on September 1, 1978, and that it is anticipated that construction on the Property will be substantially completed in December, 1978, shortly after which Mr. Ryan expects to receive marketable title to the condominium unit in accordance with the Purchase and Sale Agreement.

The LDA provides in Section 913 that "the respective provisions of this Agreement shall be binding upon, and shall inure to the benefit of the successors and assigns of the Redeveloper and the public body or bodies succeeding to the interests of the Authority, and to any subsequent grantees of the Property." As a condominium unit purchaser, Mr. Ryan would be a "subsequent grantee" of the Property, and consequently,

Mr. Harold J. Carroll
Page 2
January 12, 1979

he would be bound to the obligations, and enjoy the benefits of the LDA. However, Section 909 of the LDA provides that the provisions of the LDA shall not survive the issuance of the Certificate of Completion except only to the extent stated in the Deed. Paragraph 1 of the Deed provides that, after issuance of the Certificate of Completion with respect to the individual parts or parcels of the Property which the Redeveloper is authorized to convey, "neither the Grantor (BRA) nor any other party shall thereafter have...any rights or remedies...as a result of a default or a breach of any provision of the aforesaid Land Disposition or this Deed by the Grantee or any successor in interest or assign unless (1) such default or breach be...with respect to the covenants contained in and referred to in Section 301 of this aforesaid Land Disposition Agreement..."

The covenants enumerated in Section 301 are (1) to devote the property only to the uses specified in the "Downtown-Waterfront-Faneuil Hall Urban Renewal Plan," (2) to give a preference in the selection of purchasers for dwelling units to families displaced by the clearance and redevelopment activities, (3) not to discriminate upon the basis of race, color, sex, religion or national origin in the sale, lease or rental of the property, (4) to comply with all applicable laws and regulations regarding the use of lead based paint.

On the basis of the facts presented, nothing more appearing, I conclude that there is no violation of the Conflict of Interest Law. However, to avoid such a violation, it will be necessary for Mr. Ryan to abstain from participating in any particular matter before the BRA concerning the Property, or receive a written determination by the BRA Board that his financial interest in the Property is not so substantial as to affect the integrity of his services.

A municipal employee is forbidden by Section 20 of the statute to have a direct or indirect financial interest in a contract made by the same city in which the city is an interested party. Mr. Ryan has a direct financial interest in the Purchase and Sale Agreement he made with the Redeveloper. However, that is not a contract made by the city in which

Mr. Harold J. Carroll
Page 3
January 12, 1979

the city has an interest. Consequently, no violation arises from the Purchase and Sale Agreement. The LDA is a contract made by the city in which the city is an interested party. When Mr. Ryan takes title to the condominium unit he becomes a "subsequent grantee" of the Property subject to the LDA and thereby acquires an interest in that contract. However, since Mr. Ryan will not become a subsequent grantee until after issuance of the Certificate of Completion, the interest of Mr. Ryan as a condominium unit purchaser in the LDA is very narrowly circumscribed. As set out in more detail above, after issuance of the Certificate of Completion, the condominium unit purchaser's only surviving interest in the LDA is the duty to comply with the Section 301 covenants: use restrictions set out in Urban Renewal Plan; preference to displacees; non-discrimination; compliance with lead-based paint laws. These covenants, mandated by federal urban redevelopment statutes, are in the nature of ordinances incorporated into the LDA for the benefit of the general public. In my opinion, the Section 301 covenants do not constitute a direct or indirect financial interest in a contract within the meaning of Section 20 of the statute. Accordingly, I conclude that there is no violation of Section 20.

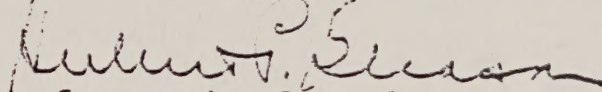
Separate and apart from the LDA, Mr. Ryan has a present financial interest in the property itself by virtue of the Purchase and Sale Agreement, and that financial interest in the property will be perfected and continue upon his taking title to the condominium unit. It appears from the LDA and the Deed that the BRA has continuing obligations and prerogatives with respect to the Property, such as, without limitation, the obligation to make best efforts to construct certain public improvements contiguous to the Property, the obligation to issue a Certificate of Completion promptly upon completion of the project in accordance with the specifications, the reserved right of re-entry upon breach by the Redeveloper of conditions subsequent, the right to enforce, either until the year 2004 or perpetually, use restriction covenants, and so forth. The BRA's action or inaction with respect to these obligations and prerogatives would affect the value and marketability of the Property and Mr. Ryan's financial interest in the condominium unit.

Section 19 of the statute forbids a municipal employee to participate in any particular matter in which he has a

Mr. Harold J. Carroll
Page 4
January 12, 1979

financial interest. In my opinion, the various actions that the BRA might take with respect to the Property in question would be "particular matters" within the meaning of the statute, and it would be a violation of Section 19 if Mr. Ryan participated personally in those matters unless he first disclosed to the BRA his financial interest in the Property and obtained from the BRA Board a written determination with respect to each particular matter that his interest is not so substantial as to be deemed likely to affect the integrity of his services. Alternatively, Mr. Ryan could avoid a violation of Section 19 by simply abstaining from participation in any particular matter affecting the Property.

Very truly yours,


Corporation Counsel

HPG:MJB/mlt

cc: Barry T. Hynes, City Clerk